



Federal Communications Commission
Washington, D.C. 20554

DA 07-3383
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED

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Re: Applications for Renewal of License
West Virginia Media Holdings, LLC
WOWK-TV, Huntington, West Virginia
(File No. BRCT-20040601BLO; Fac. ID
No. 23342)
WTRF-TV, Wheeling, West Virginia
(File No. BRCT-20040601BMQ; Fac. ID
No. 6869)
WVNS-TV, Lewisburg, West Virginia
(File No. BRCT-20040601BNB; Fac. ID
No. 74169)
WBOY-TV, Clarksburg, West Virginia
(File No. BRCT-20040601BNF; Fac. ID
No. 71220)

Gentlemen:

On September 1, 2004, Messrs. John R. Raese, J. Robert Gwynne, and Dale B. Miller (“Petitioners”) filed an Informal Objection against the above-referenced television broadcast license renewal applications. West Virginia Media Holdings, LLC (“WVMH”), the licensee of the above-referenced stations, filed an Opposition to Informal Objection on September 14, 2004. For the reasons set forth below, we grant in part and deny in part the Informal Objection. We further admonish WVMH for failure to file with the Commission 17 option agreements (“Option Agreements”), as required by section 73.3613(b)(3)(iii) of the Commission’s rules.¹

¹ 47 C.F.R. § 73.3613(b)(3)(iii).

Background. The Petitioners argue that WVMH misrepresented facts in its applications by falsely certifying in response to Section IV, Question 3 of each that its public inspection files were complete, and that “[t]hese acts of misrepresentation make [WVMH] unfit to continue as a trustee for so important a public resource as the nation’s broadcast spectrum.”² They state that inspections conducted by their staff in July 2004 indicate that WVMH failed to place either a copy of the full text of the Option Agreements and a separate limited partnership agreement, or a separate list disclosing these documents, in its public inspection files, in violation of section 73.3526(e)(5) of the Commission’s rules.³ The Petitioners further allege that WVMH failed to file the Option Agreements with the FCC as required by section 73.3613(b)(3) of the Commission’s rules.⁴

WVMH replies that the Option Agreements consist of stock option agreements issued to 15 employees and two oral commitments to issue stock options to two employees, and that it did provide a list disclosing these documents in its most recent ownership reports,⁵ which it placed in the stations’ public files. According to WVMH, section 73.3526(e)(5) does not require licensees to maintain a separate list of such agreements in addition to the list provided in response to Section II, Question 7 of the ownership reports. WVMH therefore states that it correctly certified that its public inspection files were complete. Even were the Commission to find that it violated section 73.3526(e)(5) of the Commission’s rules, disclosure of the contracts, according to WVMH, conclusively demonstrates that it lacked the intent to deceive, a requirement for a finding of misrepresentation. WVMH acknowledges that it did not file the Option Agreements with the Commission until September 14, 2004, contemporaneous with its Opposition to Informal Objection, but argues that “the rules are ambiguous as to whether filing the Option Agreements with the Commission is required” since the stock interests at issue were between 0.14% and 4.16% and thus nonattributable under Note 2 to section 73.3555 of the Commission’s rules.⁶ WVMH finally contends that the Informal Objection is an anticompetitive effort to delay action on the license renewal applications since the Petitioners have significant media interests in West Virginia.

Discussion. Section 73.3526 of the Commission's rules requires all licensees of commercial broadcast stations to maintain a public inspection file containing designated information and documentation, and section 73.3526(e)(5) in particular states that such designated information shall include a licensee’s most recent ownership report. As set forth in section 73.3526(e)(5), a licensee may either retain in the public inspection file “a copy of the contracts listed in such [ownership] reports in accordance with §73.3615(a)(4)(i),” or retain an

² *Informal Objection*, at 1.

³ 47 C.F.R. § 73.3526(e)(5).

⁴ The Petitioners, however, do not state that WVMH failed to file the limited partnership agreement with the FCC.

⁵ In an attachment to the Informal Objection, the Petitioners provided copies of two ownership reports, one which listed the Option Agreements, and a second that listed the limited partnership agreement. *Informal Objection*, at Exhibit B.

⁶ *Opposition to Informal Objection*, at 5.

up-to-date list of such contracts, so long as the licensee provides copies of the contracts to requesting parties within 7 days.⁷ “Such contracts,” as defined by section 73.3615(a)(4)(i) of the Commission’s rules, includes all documents required to be filed with the Commission under section 73.3613 of the Commission’s rules.⁸ Section 73.3613(b)(3) requires that all licensees file with the FCC all “[c]ontracts, instruments or documents relating to the present or future ownership or control of the licensee’s or permittee’s stock, rights or interests therein, or relating to changes in such ownership or control,”⁹ such as “options to purchase stock and other executory agreements.”¹⁰

On June 1, 2004, WVMH filed an ownership report for the aforementioned stations setting forth that an “Option Commitment” had been made between it and 17 specified individuals.¹¹ Section 73.3526(e)(5) does not state that a licensee must maintain an identical list of such contracts separate from the one provided in the ownership report. To read the section otherwise, as the Petitioners argue, would be inconsistent with the purpose of the Commission’s 1998 *Report and Order* simplifying the public file rules, which was to adopt clear, easy-to-administer public file rules that strike an appropriate balance between ensuring that the public has reasonable access to information contained in each station’s public file while minimizing regulatory burdens on licensees. In this case, maintaining two identical lists is unnecessary since the public typically examines the ownership report first to acquire ownership information about the station. Members of the public are entitled to full copies of the contracts listed in the ownership report upon request to the licensee. Because WVMH did place in the stations’ public inspection files ownership reports containing an up-to-date list of contracts, we find that WVMH did not violate section 73.3526(e)(5) of the Commission’s rules and, therefore, did not falsely certify that its public inspection files were complete.

However, section 73.3613(b)(3)(iii) requires licensees to file with the Commission “options to purchase stock and other executory agreements.”¹² The language of section 73.3613(b)(3) does not restrict the filing requirement to those contracts that, if executed, would result in an attributable interest pursuant to Note 2 to section 73.3555 of the Commission’s rules. WVMH’s argument to the contrary is unpersuasive since WVMH did disclose the Option Agreements in response to Section II, Question 7 of the ownership reports, which, as discussed above, specifically limits disclosure to those “contracts and other agreements” required to be filed with the Commission.

In assessing an appropriate remedy for a violation of our rules, we must take into account the statutory factors set forth in section 503(b)(2)(D) of the Communications Act of 1934, as

⁷ 47 C.F.R. § 73.3526(e)(5). See also *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15713 (1998), recon. granted in part, 14 FCC Rcd 11113 (1999) (“1998 Report and Order”).

⁸ 47 C.F.R. § 73.3615(a)(4)(i).

⁹ 47 C.F.R. § 73.3613(b)(3).

¹⁰ 47 C.F.R. § 73.3613(b)(3)(iii).

¹¹ See BOA-20040601BBK.

¹² 47 C.F.R. § 73.3613(b)(3)(iii).

amended (the “Act”),¹³ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The violations here appear to be isolated occurrences, so while a misunderstanding of our rules does not excuse the violation,¹⁴ in exercising our discretion under section 503(b)(2)(D) of the Act, we conclude that a monetary forfeiture would not be the appropriate remedy. We will instead admonish WVMH for its failure to file the Option Agreements. We remind WVMH that the Commission expects licensees to fully comply with the filing requirements set forth in section 73.3613 of the Commission’s rules.

Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.¹⁵ We conclude that the violation of section 73.3613 was not serious enough to justify designating the above-reference license renewal applications for hearing under section 309(k)(1) of the Act since the violation appears to be isolated. Moreover, we find no evidence of violations that, when considered together, would constitute a pattern of abuse.

Finally, we deny as meritless WVMH’s argument that the Informal Objection in essence constitutes a “strike petition.” In evaluating such allegations, we consider whether the filer has filed the pleading for the primary and substantial purpose of delay.¹⁶ The evidentiary standard is high.¹⁷ We find that the bare allegation that the Petitioners competed with WVMH in the West Virginia media market fails to meet this standard.

Accordingly, IT IS ORDERED, that West Virginia Media Holdings, LLC, licensee of the above-referenced stations, is hereby ADMONISHED for its failure to file 17 stock option agreements with the Commission, as required by section 73.3613(b)(3)(iii) of the Commission’s rules. IT IS FURTHER ORDERED that copies of this letter shall be sent by Certified Mail, Return Receipt Requested, to James K. Edmundson, Esq., Edmundson & Edmundson, 1818 N Street, NW – Suite 700, Washington, DC 20036, counsel for West Virginia Media Holdings, LLC.

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ Section 503(b)(1) of the Act states that any person who is determined by the Commission to have *willfully* or *repeatedly* failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty. 47 U.S.C. § 503(b)(1). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1).

¹⁵ 47 U.S.C. § 309(k)(1).

¹⁶ *Radio Carrollton*, 69 FCC 2d 1138, 1149-50 (1978), *clarified*, 69 FCC 2d 424 (1978), *recon. denied*, 72 FCC 2d 264 (1979), *aff’d sub. nom., Faulkner Radio, Inc. v. FCC*, 557 F.2d 866 (D.C. Cir. 1980), *cert. denied*, 450 U.S. 1041 (1981).

¹⁷ *Id.* at 1151-1152. (In determining the primary purpose behind such a pleading, the Commission considers several factors: (1) statements by the petitioner’s principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to disposition of the requested issues; (3) the absence of any reasonable basis for the adverse allegations in the petition; (4) economic motivation indicating a delaying purpose; and (5) other conduct by the petitioner.).

IT IS FURTHER ORDERED that the Informal Objection IS GRANTED to the extent indicated herein, and IS OTHERWISE DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Ellen Mandell Edmundson, Esq.
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